United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

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75-1369

To be argued by
JOEL N. ROSENTHAL

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 75-1369

UNITED STATES OF AMERICA,
Appellee,

—v.—

MILTON PARNESS and BARBARA PARNESS,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES OF AMERICA

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BRIEF FOR THE UNITED STATES OF AMERICA

Preliminary Statement

Milton and Barbara Parness each appeal from an order of the United States District Court, Southern District of New York, Dudley B. Bonsal, District Judge, entered on September 29, 1975, denying their motions made pursuant to Rule 33 of the Federal Rules of Criminal Procedure, for a new trial. Milton Parness also appeals from Judge Bonsal's denial on the same date of his motion pursuant to Rule 35 of the Federal Rules of Criminal Procedure for a reduction or vacation of his sentence of ten years' imprisonment.

Statement of Facts

A. The Trial and Appeal

Indictment 73 Cr. 750, in seven counts, was filed on August 2, 1973, superseding Indictment 73 Cr. 157, and charged Milton Parness in Counts One, Two and Three with acquiring control of three separate enterprises through a pattern of racketeering in violation of Title 18, United States Code, Sections 1961, 1962(b), 1963 and 2. Each of Counts Four through Seven charged both Milton Parness and his wife, Barbara Parness, with a violation of Title 18, United States Code, Sections 2314 and 2. These crimes constituted the individual acts of racketeering forming the pattern of racketeering charged in Counts One through Three. At the end of the government's case-in-chief, Counts Two, Three and Seven were dismissed.

Trial before the Hon. Dudley B. Bonsal, United States District Judge, and a jury, began on September 12, 1973, and ended on October 3, 1973, when the jury convicted Milton Parness of Count One and, together with Mrs. Parness, Counts Four, Five and Six. On December 7, 1973, Judge Bonsal sentenced Milton Parness to a ten year term of imprisonment on each count, to run concurrently; a $25,000 committed fine on Count One; and a $10,000 committed fine on each of Counts Four, Five and Six. Barbara Parness was sentenced to a two year term of imprisonment on each of Counts Four, Five and Six, to run concurrently. Execution of her prison sentence was suspended and she was placed on three years' probation. Additionally, she was fined $2,000 on each count.

Following trial, and prior to their appeals, the Parnesses filed two motions for a new trial, each based upon newly discovered evidence. Both motions were denied.

Thereafter the convictions and the orders denying their two new trial motions were affirmed, *United States* v. *Parness*, 503 F.2d 430 (2d Cir. 1974), *cert. denied*, 419 U.S. 1105 (1975).

B. The Proof at Trial

The proof at trial * established that Milton and Barbara Parness defrauded Alan Goberman of his 90.5% stock holdings in a multi-million dollar gambling casino-hotel corporation—the St. Maarten Isle Hotel Corporation, N.V. (hereinafter "hotel"), in the Netherlands Antilles. Defendants accomplished this by illegally divert- to their own use a part of the gambling receipts owed to the hotel and collected by Milton Parness in its behalf and using these stolen receipts to loan Goberman $160,000 for which Goberman pledged his entire stock interest. Thereafter, by continuing to divert or withhold part of the hotel's gambling receipts and by effectively preventing Goberman from obtaining the necessary funds, they made it impossible for Goberman to repay the loan, thus permitting Parness to foreclose on the shares and take control of the hotel. Milton Parness attempted to sell the shares in Canada through a series of corporate transfers and a public stock offering. Canadian authorities learned of a forged certification on the balance sheets contained in the prospectus filed in Canada and, as a result, the public stock offering never took place. Thereafter the Parnesses actively obstructed the government's investigation of the case by giving false testimony to a grand jury and by attempting to cause a witness to perjure himself before that body.

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* A complete exposition of the facts proven at trial is contained in the government's brief on the direct appeal (Br. 2-12 Dkt. No. 74-1027) and in this Court's opinion affirming appellants' convictions, *United States* v. *Parness*, *supra*, 503 F.2d at 433-38.

C. The Third New Trial Motion

On January 22, 1975, following the Supreme Court's denial of certiorari on January 13, 1975, appellants moved for a new trial pursuant to Rule 33 of the Federal Rules of Criminal Procedure. Submitted in support of appellants' applications were affidavits from each of appellants, depositions of Allan Goberman and John Blandino (government and defense witnesses respectively) taken in a civil action in which Goberman sued the Parnesses in the United States District Court for the District of New Jersey for treble damages under Title 18 U.S.C. § 1964, and the results of a lie detector test administered to appellant Milton Parness (J. 16-325). The affidavits of appellants contended that the purportedly newly-discovered material contained in the depositions established that Allan Goberman had testified perjuriously at trial concerning the sums of money owing to his casino between January and March 1971. The results of Parness' polygraph test purported to demonstrate that Parness was innocent.

Thereafter, on February 28, 1975 appellants submitted an additional affidavit, to which was attached as an exhibit a transcript of Allan Goberman's statements to the District Judge handling the treble damages suit which, appellants contended, evidenced the existence of a pre-trial promise from the government to Goberman that it would assist him with the recovery of the hotel in return for his testimony at trial (J. 326-373).

On March 4 and 7, 1975 the government submitted responsive affidavits controverting appellants' arguments (J. 374-390). Appellants submitted a reply affidavit on March 17, 1975 (J. 391-410).

On March 24 and 25, 1975 appellants' counsel each submitted letters to the court to which were attached copies of letters which they claimed to have recently dis-

covered in the court files of an action Goberman had commenced against the government in the United States District Court for the Eastern District of Pennsylvania to recover $60,000 seized from one Sam Norber and owed to the hotel. These letters were written by Goberman to various government employees, primarily special attorneys of the Department of Justice, during the period of December 13, 1972 to August 23, 1973.* Appellants contended that the letters further evidenced, among other things, promises by representatives of the government that the government would assist Goberman in recovering his hotel and would assist him in recovering $60,000 in cash that had been seized by the Internal Revenue Service ("IRS") and which Goberman claimed was his. Appellants claimed that since the government had not turned over these letters to the defense at trial, it had violated its obligations under Title 18, United States Code, Section 3500, and *Brady* v. *Maryland*, 373 U.S. 83 (1963) (J. 411-415).

Thereafter, on May 12, 1975 appellant Milton Parness moved by notice of motion and affidavit, pursuant to Rule 35 of the Federal Rules of Criminal Procedure, for a modification and reduction of his sentence. Parness based

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* Of the 24 letters written by Goberman and submitted to the trial court by either the defense or the government, nine were sent to R.J. Campbell, a Special Attorney of the Department of Justice then in charge of Strike Force 18 in Washington, D.C.; five were sent to Special Assistant United States Attorney Michael Pollack of the Eastern District of New York; three were sent to Lawrence Leff, a Special Attorney of the Department of Justice attached to the Strike Force in Detroit, Michigan; three were sent to Sidney Resnick, an IRS agent in Detroit, Michigan; one was sent to William Glase, an IRS agent, care of R.J. Campbell; and one was sent to "Miss Marge", who was John Dowd's secretary, requesting that a briefcase inadvertently left behind by Goberman at a Strike Force office be returned to him.

his claim for reduction of his sentence upon his allegedly exemplary behavior subsequent to his conviction; the allegedly disparate sentence he received; the unconstitutionality of the sentencing procedure; and, the newly discovered evidence which he claimed cast doubt upon his guilt (J. 416-434).

On July 17, 1975 the government submitted a reply affidavit which contained affidavits of the four government attorneys who had at one time or another dealt with the witness, Goberman, in which each prosecutor denied ever having promised Goberman any governmental assistance in the recovery of the $60,000 or the hotel (J. 435-457). Specifically, Harold McGuire, the Assistant United States Attorney who was in charge of the trial of appellants, recited that Goberman had asked for assistance in the recovery of the hotel, and had been consistently told that no such assistance would be forthcoming (J. 446-448). An additional affidavit of John Dowd, the only Strike Force attorney who assisted in the preparation and trial of the case during the Spring and Fall of 1973, recited that in connection with the trial he had been responsible for the collection and distribution of the *Brady* and *3500* material, and that none of the newly discovered Goberman letters were or had been a part of the Strike Force 18 investigative file on Parness, maintained in Washington, D.C., which Dowd had used to prepare for and conduct the trial of the case. Dowd further stated that subsequent to trial, in about mid-December 1973, and in connection with Goberman's claim for reimbursed witness fees, Dowd received copies of letters dated prior to trial and written by Goberman to government agents other than Dowd. Subsequent to March, 1975 and the filing of this new trial motion, Dowd for the first time conducted a search of the administrative files of Strike Force 18 and found a number of previously undisclosed letters from Goberman to Department of Justice and IRS officials,

which he attached as exhibits to his affidavit. Read in its entirety (J. 477-480), Dowd's affidavit made clear that he had no knowledge before or at trial of the existence of any of the Goberman letters presently relied upon by appellants.

On August 14, 1975 appellants submitted reply affidavits, in which they demanded a new trial or, in the alternative, a hearing on the issue of the promises. Attached to the affidavit was a copy of a complaint, filed by Allan Goberman, against the government in the United States District Court for the Eastern District of Pennsylvania, seeking $7,500,000 damages for invasion of privacy, in which Goberman recited that Campbell at one time had advised him that the government wanted to have the hotel returned to him. Appellants contended that the complaint was additional evidence of the promise purportedly made to Goberman (J. 521-551).

On August 27, 1975 the court heard oral argument on the issue of whether a hearing was required on the circumstances of the non-disclosure of the letters. On September 29, 1975, without having held an evidentiary hearing, the court issued an opinion denying appellants' motions for a new trial, and a reduction in sentence.

The court specifically held that the "newly discovered" evidence in Goberman's depositions was actually known or available to the defense at trial. The court also specifically found that there was no evidence of any promises made to Goberman by the government. Finally, the court held that even assuming (but not deciding) that the letters constituted *3500* or *Brady* material, their non-production was inadvertent and that, under the applicable legal standard, appellants were not entitled to a new trial since the new material in the hands of skilled counsel could not have induced a reasonable doubt in the minds of enough jurors to have avoided a conviction.

ARGUMENT

POINT I

The District Court found as a fact that the government's non-disclosure of Goberman's letters was inadvertent. Its further finding that there was no significant chance that the letters, developed by skilled counsel, could have induced a reasonable doubt in the minds of enough jurors to avoid a conviction, was amply supported by the record, and its denial of the new trial motion was therefore entirely correct.

The law is well settled in this circuit that inadvertent non-disclosure of *3500* or *Brady* material will not result in the granting of a new trial unless there is a "significant chance that this added item, developed by skilled counsel as it would have been, could have induced a reasonable doubt in the minds of enough jurors to avoid a conviction." *United States* v. *Seijo*, 514 F.2d 1357, 1364 (2d Cir. 1975); *United States* v. *Stofsky*, Dkt. No. 74-1860 (2d Cir., Nov. 7, 1975), slip op. 515.

The District Court found here that the government's non-disclosure of the Goberman letters was the result of inadvertence (see, *infra*, Point II). Applying the appropriate "skilled counsel" test, the court concluded that had these letters been available, a conviction could not have been avoided. That determination may not be disturbed unless unsupported by the evidence and clearly erroneous. *United States* v. *Miranda*, Dkt. No. 74-2651 (2d Cir., Dec. 3, 1975), slip op. 6545, 6560; *United States* v. *Zane*, 507 F.2d 347 (2d Cir. 1974); *United States* v. *DeSapio*, 456 F.2d 644, 647-48 (2d Cir. 1972); *United States* v. *Silverman*, 430 F.2d 106, 119 (2d Cir. 1970), *cert. denied*, 402 U.S. 953 (1971).

Given the record here, the trial court could hardly have found other than it did. A comparison of the contents of the Goberman letters now relied upon with the record of the trial, including but not limited to the *Brady* and *3500* material furnished to defense counsel—including the more than eight hours of tape recorded conversations between Goberman and various government agents during which Goberman was extensively debriefed about the facts of this and other possible cases and his relationship with the Parnesses *—makes plain that the letters in issue are in no way inconsistent with Goberman's trial testimony, provide no new information regarding Goberman's possible motive or bias to testify and in no sense serve to exculpate the Parnesses. To the extent the letters are at all relevant to any of the issues at trial, they are cumulative of what the defense then knew or should have known. Moreover, even if the letters could arguably be said to have served somehow to impeach further Goberman's trial testimony, their impact on the latter's credibility would surely have been negligible and fallen far short of the "skilled counsel" standard applicable here, in light of the virtually wholesale impeachment of that testimony occasioned by already extraordinary defense efforts. In any event, irrespective of the quantum of impeaching effect on Goberman's testimony the letters could arguably have added, their use as a predicate for appellants' present claims is unavailing since the government's proof of the Parnesses' guilt on Counts Four and Six (and hence of Milton Parness' guilt on Count One) was adduced largely through sources and witnesses other than Goberman.

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* Defense counsel were furnished with the actual tapes themselves, in advance of trial, which, presumably, they listened to, and subsequently had marked for identification (Tr. 567, 569).

We turn now to appellants' claims of the utility to them of the Goberman letters, dealing with several areas on which appellants focused.*

A. Letters allegedly evidencing Goberman's motivation to cooperate with the government and give evidence against the Parnesses.

Milton Parness' argument that Goberman's letters display a previously unknown motive to cooperate with the government and give evidence against the Parnesses opens with the incredible statement that defense counsel was unable to find *any* possible motive to lie with which to impeach Goberman:

> "Goberman's . . . testimony was literally devoid of any motive—save telling the truth — for his cooperation with the government."
>
> In this relative void, defense counsel attempted valiantly to uncover and exploit some motive; but the only one even suggested by available evidence was that Goberman had cooperated with the government in return for a suspended sentence on federal criminal charges. (M Br. 22).

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* Arguments in this brief will be addressed primarily to the points raised in the brief of appellant Milton Parness, which embodies both appellants' arguments in greatest detail. References to Milton Parness' brief will be abbreviated herein as "M. Br." and to Barbara Parness' brief as "B. Br". References to the briefs generally will be to Milton Parness' brief unless otherwise indicated. References to the trial transcript will be abbreviated herein as "Tr", references to the "joint" appendix as "J" and references to the government's appendix (which contains transcripts of tape recordings turned over to defense counsel in advance of trial, and was submitted as Exhibit 8 to the government's affidavit of July 12, 1975) as "G".

This claim is utterly without support in the record; indeed the trial record is filled with a variety of substantial and persuasive potential motives for Goberman to cooperate with the government, upon which he could have been or actually was cross-examined. As Judge Bonsal observed in his opinion, the very statute upon which the Parness' were prosecuted afforded ample material upon which to cross-examine Goberman on his motives for testifying:

> "The Court notes that Defendants' contentions about Government promises to Goberman to recover his property may arise from the unusual provisions contained in the anti-racketeering statute (18 U.S.C. § 1961 *et seq.*), which provide in section 1963(a) that whoever is convicted thereunder 'shall forfeit to the United States' any property acquired in violation of the statute, and in section 1963(a) that the 'Attorney General is authorized to seize such property and to dispose of it 'as soon as commercially feasible, making due provision for the rights of innocent persons.'
>
> 'Of course, these provisions were known to Defendants' counsel at the time of trial and indeed were discussed informally with them by the Court on the question of their applicability to property like the Casino-Hotel, which is located on St. Maarten, Netherlands Antilles, outside the United States and hence outside of its jurisdiction.
>
> "In any event, the statute provided adequate basis for cross-examination of Goberman as to whether he expected to get the Casino-Hotel back as an 'innocent person' and for argument before the jury that he was testifying for that purpose." (J 557)*

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* See, *e.g.*, Tr. 1510-1514.

Moreover, counsel was also aware (Tr. 1344) of the import of Title 18, United States Code § 1964(c) which provides for the institution of a civil suit against those convicted of racketeering activities by "any person injured in his business or property by reason of a violation of section 1962" for the recovery of treble damages, and the cost of the action, including reasonable attorney's fees. Conviction of the Parnesses for a violation of Section 1962 certainly increased the likelihood of Goberman's recovery in such an action. Thus, despite the powerful financial motives for testifying against the Parnesses that Goberman would reasonably have been expected to have had, counsel elected not to examine Goberman about them.

Goberman, moreover, blamed Parness for his financial ruin. Goberman portrayed himself as a successful businessman with a net worth of nearly 3 million dollars before he met Parness, and as a pauper living on his social security check after Parness had "stolen" his hotel. Goberman placed the blame squarely on Parness' shoulders and told the jury exactly that:

> "Yes, I blame Mr. Parness quite certainly, yes." (Tr. 162).*

Parness' counsel thereafter proceeded to demonstrate that Goberman was in fact in financial trouble even *before* he met Parness (Tr. 166-175).

The Parnesses' further claim that defense counsel's cross-examination of Goberman on the issue of his motive to cooperate at or about the time of his indictment for tax violations was ineffectual also does not withstand analysis.

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* Goberman also offered the jury his observation that Parness was a "sick" person (Tr. 163), which counsel knew to mean "a psycho" (G. 146).

The record of Roy Cohn's summation dramatically illustrates that Goberman's motives to revenge himself on Parness and gain favorable treatment from the government in his tax evasion case were effectively portrayed for the jury (*e.g.*, Tr. 1563-1572). Thus, defense counsel argued that after Parness had refused to pay any further sums to Goberman, Goberman sought revenge by testifying against Parness in the grand jury.*

The jury knew, of course, that Goberman had indeed testified against Parness in that grand jury.**

Mr. Cohn was equally explicit in his argument that Goberman hoped to gain leniency from the government in his tax evasion case. Thus, after telling the jury that Goberman knew he was under investigation for tax evasion—("Now, knowing that this was coming to a head, and that this investigation had to develop, Goberman had to do something. He had to talk his way out of this one." (Tr. 1568))—and after suggesting to the jury that Goberman had been indicted so that the government would

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* Counsel argued in part:

> "Parness had paid his lawyers, paid his bills, paid Goberman $500 a week, $200, 300 out of the casino, from March until June or July, whenever the dates were. He said no more. Enough is enough.
>
> And did Goberman keep his threat? You are darn right he did.
>
> The next thing you know, like a month later, Mr. Goberman walks into a federal grand jury in Brooklyn under subpoena" (Tr. 1568).

** Appellants' claim that Goberman's posturing that he had no personal stake in seeing the Parnesses convicted refuted counsels "ineffectual" attempt to impeach Goberman, is ludicrous. If anything, Goberman's credibility was impaired with such obvious disingenuousness.

have something to hang over Goberman's head,* Cohn proceeded to read from the minutes of Goberman's guilty plea to that indictment, in which Goberman's counsel described his client's active, useful and extensive cooperation with the government against the Parnesses (Tr. 1570-71). Defense counsel then proceeded to read additional parts of these minutes in which the sentencing judge explained that the government and defense counsel had made a bargain, and the result of that bargain was that Goberman could not be sentenced to jail, but at most four years' probation (Tr. 1571-72).

No more effective arguments for Goberman's motive to cooperate with the government could have been made. No refutation of either of these arguments was forthcoming from government counsel in summation.

Nevertheless, in face of all the powerful motives which could have induced Goberman to cooperate actively with the government and, arguably, to testify falsely, which were known to defense counsel at trial, appellants on this appeal claim that the hitherto unrevealed motive for Goberman to cooperate was his hope for governmental assistance in recovering $60,000 seized by the IRS, which he claimed was his! Goberman's motive, appellants now contend, was not the possibility of recovering the three and one-half million dollar hotel under the statute, not the possibility of recovering thirteen million dollars in treble damages from Parness, not the possibility of obtaining a lenient sentence in his tax evasion case, and not the possi-

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* Unlike government counsel's remark in questioning Goberman, repeated in italics at page 23 n. 24 of Milton Parness' brief, which the court struck and instructed the jury to disregard (Tr. 519), defense counsel's remarks in summation quoted in the text above, although objected to, were not stricken, nor was the jury instructed to disregard them (Tr. 1569).

bility of revenging himself upon the man who Goberman felt was responsible for his financial ruin, but rather it was the possibility of recovering the $60,000 held by the IRS. Appellants further contend that only the fact that they were unaware that Goberman was claiming this money kept them from utilizing this "devastating" cross-examination ammunition (M. Br. 26). It is beyond peradventure that the impeaching effect of this claimed "motive" on Goberman's part is so utterly insignificant as to be without any marginal utility when examined in the light of the other impeaching material available to defense counsel.

Perhaps even more importantly, defense counsel should well have been aware at trial of the fact that Goberman would seek the return of this money from the IRS. At trial the government furnished defense counsel with an affidavit signed by Allan Goberman, later marked as an exhibit, in which he recited, in pertinent part, that the Norber $60,000 was seized and that "it is now being held by the Internal Revenue Service under a claim against Mr. Nober [sic]. However, this money belongs to my hotel corporation. *I am making a claim for it . . .*" (emphasis added) (GX 3506).

Despite this knowledge, and despite Goberman's testimony at trial reiterating his claim that this was money to which the hotel, and consequently he, was entitled, defense counsel chose not to inquire of Goberman what steps if any, he had actually taken to secure the return of his $60,000. Given Goberman's bankruptcy, reliance upon his social security check as his sole source of income and his statement that he was still trying to get the government to pay his travel expenses for his frequent trips to Washington to help the government (Tr. 232), the importance of $60,000 to Goberman could hardly have been lost upon experienced defense counsel. Moreover, since Goberman was testifying as a witness for the govern-

ment, and since it was the latter which had seized and held the $60,000 for which Goberman was making a claim, defense counsel was fully able to make the argument that Goberman had a motive to testify for the government and against Parness. Defense counsel, however, chose to avoid this argument altogether.

Finally, the contention, advanced at length in appellant's brief (M. Br. 22-26), that certain of the undisclosed letters evidence Goberman's belief that the government would help him recover the $60,000 and that his cooperation was the quid pro quo for such assistance, is utterly unsupported by examination in full of the letters themselves and of Goberman's own descriptions of his dealings with the prosecution contained in his two complaints for relief against the government (J470-476, 530-551). A reading of the *complete* letters and diary entries referred to at pages 23, 24 and 25 of Parness' brief reveals, as R.J. Campbell confirms in his affidavit (J 454-455), that while Goberman asked for help in recovering the $60,000, he was merely given the form and directed to the appropriate IRS agent. Thus, Goberman makes clear in his letter of March 28, 1973 to R.J. Campbell (J 588-589) that he wants the IRS agent to have an opportunity to examine the records and prior statements which he had furnished to Campbell * and the investigators, and which he no longer had access to and which, Goberman claimed, established his right to the money.

Additional portions of a letter cited at page 24 of Parness' brief purport to demonstrate that Goberman

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* Parness also suggests that Campbell's "furnishing" to Goberman of a copy of the Terraso Prospectus strengthened Goberman's motive to cooperate, and reinforced his belief that assistance would be forthcoming (Br. 25 n. 26). The simple fact is that Goberman had originally furnished the prospectus to the investigators (G. 201-202) and, as with his other documents, wanted returned to him a copy for his own use.

"clearly believed that his cooperation was the quid pro quo" for Campbell's help in recovering the $60,000. This letter, however, had absolutely nothing to do with the subject matter of the Norber money or Goberman's claim to recover it. The letter, dated January 22, 1973, (J572), was written not to Campbell but to Michael Pollack, and concerns miscellaneous information supplied by Goberman to investigators about various individuals whom Goberman had met, heard of, or who had been to the hotel on junkets. As Goberman's other correspondence makes clear (J.585, 586, 587), the subject of Goberman's making a claim against the IRS was not discussed with R.J. Campbell until six weeks after January 22, 1973.

It follows, therefore, that Goberman did not entertain any belief that the government would give him any special assistance in recovering the $60,000, and that any claim that he cooperated with the government in consideration of such expected treatment, is completely without merit.*

B. Letters evidencing Goberman's "rapport" with the prosecutors, "eagerness to cooperate" and "desperate mental state".

Appellants attempt to demonstrate that non-production of the letters deprived them of potentially damaging and devastating cross examination material contained therein, which purportedly evidences Goberman's willingness to cooperate, his rapport with the prosecutors and his desperate mental state (M. Br. 26-28). This contention is

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* Of course, so far as the record reveals, Goberman has never recovered the $60,000 from the government and commenced an action against the government in federal district court to do so. (J. 437).

untenable, since virtually identical evidence was available to the defense at trial.*

Appellants contend that the letters show that Goberman enjoyed a warm, friendly relationship with both Pollack and Campbell, as evidenced by Goberman's informal salutations in his letters (M. Br. 26). Appellants ignore, however, the following facts, either elicited at trial or known to defense counsel and not utilized: (1) Campbell had driven to Goberman's home in Pennsylvania with his wife, and stayed to talk for a few hours (Tr. 243, 245); (2) Goberman spent a total of over eight hours being interviewed by agents on at least three separate days at his home, and during the course of the interviews offered them snacks (G. 13, 14), and volunteered information on a whole variety of subjects, including people he considered members of organized crime (e.g., G. 23, 41, 56); (3) Goberman frequently referred to Michael Pollack in the tapes as "Mike" (e.g., G. 103, 201); and Agent Eissler as "Howie" or "Howard" (G. 189-90) (4) Agent Glaze offered to drive Goberman into New York for the trial and his preparation for the same (Tr. 259); and (5) Goberman felt comfortable enough with AUSA McGuire to talk with him about his impacted wisdom tooth during a recess at trial, (Tr. 195).

Parness further endeavors to demonstrate that he was deprived of information relating to Goberman's willingness to produce evidence for the prosecutors, which in-

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* On the general subject of Goberman's motives and "eagerness to cooperate" compare the letters cited by appellants with, for example, Goberman's statements at G. 68, which defense counsel chose not to utilize at trial, containing the statements that "I'm on your [Dept. of Justice] side . . . . I think that these people are crooks and I think that these people should be brought to justice . . . . I've told you that and you must realize I'm sticking my neck out . . . ."

formation is analogized to the undisclosed letters in *United States* v. *Pacelli*, 491 F.2d 1108 (2d Cir. 1974) and *United States* v. *Sperling*, 506 F.2d 1323 (2d Cir. 1974). Citing as the primary example a letter in which Goberman admits to having travelled to St. Martin to retrieve records, during which he passed a bad check, appellant categorizes Goberman's efforts as "unprecedented", and claims that had defense counsel known of this information, Goberman's "true position could easily have been exposed with devastating effect." (M. Br. 27).

This claim is utterly untenable; defense counsel was, in advance of trial, fully aware of the circumstances of Goberman's "eager" production of evidence. Goberman had explained the facts of his trip to St. Martin to retrieve his records, and the circumstances of his passing the bad check, in his tape recorded interviews with the agents (G. 356-357), which were turned over to counsel in advance of trial. Moreover, during trial, Goberman embellished this story with the fact that he had to break into the house in which the documents he sought were kept (Tr. 311, 312).* "Skilled counsel" consciously elected to avoid this whole subject matter, and when Goberman began testifying about the facts and circumstances of the break-in, counsel remarked:

> "I really don't care about that, Mr. Goberman." (Tr. 312).

Similarly, appellants' claim that some of Goberman's letters compel the conclusion that Goberman is or was mentally unstable, is unfounded.

Goberman's letter of January 22, 1973 to Pollack, when read in its entirety, reflects nothing more than Goberman's aggravation at being unable to obtain the

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* Goberman also related the break-in story in a deposition, turned over to defense counsel as GX 3502.

records he wished from the government, at being unable to reach government agents at their phone numbers and at having continually to repeat information to government investigators that he had given before. Indeed, this letter, written three weeks after Goberman's sentencing on his tax case, merely expresses Goberman's aggravation with the government, and not an unbalanced mind. Goberman testified at trial that this was a low period for him emotionally and physically (Tr. 256); counsel well knew at trial from the minutes of Goberman's plea and sentence (Defendants Ex. B., Tr. 219-221), that Goberman's concern for his heart was a real one. After all, Goberman had suffered three heart attacks previously. The diary page (J569) quoted by Parness (M. Br. 28) is more instructive for what has been omitted, than for what was quoted. The full text * of the diary entry reveals that Gobermon was completely unhappy with the way the government was treating him; it is hard to see how the letter evidences Goberman's "unbalanced" mind.

The letter (J568) to which Goberman attached this entry shows that Goberman was concerned with receiving copies of the tapes he had made and the records he had turned over.**

From all of the foregoing, it is obvious that counsel was indeed aware of all the information concerning

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* That diary entry (J 569) reads:

"The whole thing has got me down. Swain won't send me my copy. Mike is sitting on his hands. R.J. still treats me, and talks down to me, like some crummy criminal.

I dam near had a heart attack, thru the pressures.

I must be dead as far as the hotel is concerned.

I hope the "strike force" is happy the way they fucked up my & my families [sic] life!"

** Appellants' final claim that the style in which the letters are written somehow evidences a diseased mind is too frivolous to warrant response.

Goberman's supposed eager cooperation and rapport with the prosecutors presently claimed to have been unknown to the defense, and either elected not to utilize it, or employed it to its full extent. Since the letters, unlike those in *Sperling, Pacelli & Seijo*, largely revealed the witness antipathy for the prosecutors and were, in any event, completely duplicative of what was available to counsel at trial, they could not have added one whit to the further impeachment of Goberman.

C. The non-disclosure of allegedly direct exculpatory evidence, and the concealment of Goberman's alleged perjury at trial.

Appellants further argue that the letters demonstrate that Goberman lied at trial concerning two matters, both of which, they contend, were vital to the government's case. Specifically they assert that the letters conclusively demonstrate that Goberman lied when he claimed that Parness had exclusive control over the junkets and marker collections, and that he lied when he claimed that the $60,000 was being delivered to Parness (M. Br. 29-32). Both contentions are wholly in error.

On the issue of exclusive control over junkets and marker collections, appellants contend that others besides Parness ran junkets and collected markers and they further imply that Goberman himself was making collections (M. Br. 30).

The sole support for this claim cited by appellants is Goberman's statement on his IRS claim (J594) that Norber, as

> "a junketeer operator, was responsible to collect and deliver to me, or my designated agents, all gambling losses of his own—his personal associates—and the people he brought to the casino on his junkets."

Appellants contend that this is the *first* time Goberman ever revealed that there were other junket operators (M. Br. 30). This incredible claim ignores all of Goberman's consistent trial testimony on the subject. Thus Goberman testified in his *direct* examination as follows:

> "Q. Was Mr. Parness involved in operating any of those junkets, to your knowledge? A. Yes sir, he was responsible for the deliverance of the junkets.
>
> Q. Of all of them? A. Well, *there were other junketeers* but they had to work through Mr. Parness." (Tr. 59) (emphasis added).

The record of Goberman's testimony * abounds with other references to the same subject, all of them consistent with the statement quoted by appellants (*e.g.* Tr. 453, 461, 465, 474, 477, 484).

Similarly, appellants' attempt to portray Norber as bringing the cash to Goberman, and not Parness, (J594, Br. 30) is old hat. At *trial* Goberman testified that he had sworn in an affidavit that "Mr. Norber was bringing the money to me." (Tr. 476-77). The affidavit (Defendant's Exhibit M; GX 3502) recites in pertinent part:

> "7. I was having the money to meet the note in suit [the Holzer note] *brought in to me* by a special messenger, a Mr. Sam Nober." [sic] (emphasis added).

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* Appellants also wholly ignore the trial testimony of two of these junketeers, who completely corroborated Goberman (Tr. 749 *et. seq.*, 781 *et. seq.*), as well as the testimony of John Blandino, a defense witness whose testimony was identical to Goberman's and the junketeers' on this point (Tr. 941, 1010, 1015). Even more incredibly, they ignore Parness' own testimony on the subject, consistent with Goberman's, made during a hearing at trial (Tr. 540, 549, 551, 522).

In fact, a reading of the full text of Goberman's IRS statement (J594) appellants now rely upon, reveals that it is even more ambiguous than the above-quoted statement which was used at trial to "impeach" Goberman. The latter is much more unequivocal in appearing to state that Norber was actually coming to meet Goberman, and not Parness.* Accordingly, nothing in Goberman's undisclosed statement concerning the delivery of the Norber money even slightly impeaches Goberman's trial testimony that Parness was the hotel's exclusive collection agent. The letters are not in the remotest way inconsistent with Goberman's trial testimony, much less do they demonstrate Goberman perjured himself.

D. Goberman was thoroughly discredited.

Appellants contend that Goberman's credibility was basically unimpaired at trial. To the contrary, however, Goberman was fully impeached; even assuming *arguendo* that the letters do tend to impeach Goberman, their utility pales in light of the extent to which Goberman's testimony was discredited.

As in *United States* v. *Rosner*, 516 F.2d 269, 273-74 (2d Cir. 1975) the sole issue before the district court was whether "additional evidence tending further to impeach the credibility of a witness whose character had already been shown to be questionable" might have induced a juror to have a reasonable doubt about appellants' guilt. The value of these letters would have been cumulative, and could have been of no material value to

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* Blandino also testified at trial about conversations among himself, Goberman and Parness shortly after the money was seized (Tr. 1024-1025). Significantly, Blandino was never asked if he knew, or if he had heard from Goberman or Parness to whom the money was being delivered.

the defense—further impeachment of Goberman would have been utterly superfluous. *See, e.g., United States* v. *Costello*, 255 F.2d 876 (2d Cir.), *cert. denied*, 357 U.S. 937 (1958), and *United States* v. *Polisi*, 416 F.2d 573 (2d Cir. 1969). Examination of Goberman's cross-examination, relevant portions of the testimony of other witnesses, and counsels' summations, mandates this conclusion.

The record of Goberman's trial testimony eloquently demonstrates his utter devastation on cross-examination, which was fully exploited by defense counsel on summation and caused government to concede Goberman's unreliability as a witness. Government counsel argued, however, that proof of the Parness' guilt did not depend on Goberman's credibility (Tr. 1682).

During Goberman's cross-examination by defense counsel, covering parts of three trial days and over 350 pages of trial transcript (Tr. 155-498, 555-76). Goberman's credibility was impeached in the following ways:

1. Goberman had been convicted in three separate cases of perjury, making false statements in loan applications and filing false income tax returns (Tr. 32, 130, 170, 513-519). Defense counsel thoroughly cross-examined Goberman on the facts of these convictions (Tr. 170, 204-229) and repeatedly referred to them in his summation (Tr. 1544, 1564-66, 1570-72).

2. Goberman made it clear that he blamed the Parnesses for the loss of both his hotel and his substantial fortune (Tr. 159-163); and believed that Parness was a "crook" (Tr. 175) who associated with a "gang of crooks" (Tr. 320). Defense counsel also demonstrated to the jury that Goberman began to testify in grand juries against the Parnesses at precisely the time Goberman was being investigated for tax evasion, and (although

it is not clear that such an arrangement was struck) that the plea bargain he made with the government resulted from his cooperation against appellants (Tr. 204-236).

3. Goberman's testimony was replete with contradictions, which were exploited by the defense in summation. Additionally, he was contradicted by both government and defense witnesses on various other points of his testimony. (See, *e.g.*, Tr. 301, 497, compare with Tr. 1022, 623-624).

4. Following Goberman's testimony, the government stipulated that Goberman had testified falsely as to two matters: first, that Goberman had not spent merely 15 minutes discussing his testimony with Harold McGuire two days before trial as Goberman testified, but that it had actually been several hours (Tr. 1312); and second, and more significantly, that there were no air ducts in the hotel (Tr. 1501-04). The significance of the latter stipulation was enormous. Goberman had testified repeatedly and emphatically that he had overheard, *through the air ducts that led into his office in the hotel*, Parness and Klavir plotting to defraud him. Defense counsel, of course, capitalized on both stipulations in his summation (Tr. 1576, 1581-1584). Unlike all of the material in the undisclosed letters, this impeachment of Goberman directly related to elements of the substantive offenses with which appellants were charged. *United States* v. *Rosner*, *supra*, 516 F.2d at 274. Proof of a general motive to lie because of a belief that the government would assist him could not have been as convincing of Goberman's unreliability as the two stipulations were.

In summation, defense counsel exploited Goberman's pervarication to its limits, and told the jury the case turned on Goberman's veracity.* Government counsel in

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* The full transcript of defense counsel's summation warrants reading; it contains a full exposition of the reasons Goberman could not be believed, ranging from his motives to lie to his actual substantive falsehoods (Tr. 1539-1639).

summation did not dispute Goberman's impeachment and, indeed, conceded it (see Tr. 1644, 1676-82).

Finally, so that there can be no doubt whatever that the jury was persuaded by defense counsel's efforts, and did not believe Goberman, reference need only be made to the post-trial hearing on October 18, 1973, in which defense counsel represented to the court that he and an investigator had spoken to the members of the jury, and that the jurors unanimously stated that they had not believed Goberman's testimony (Minutes, October 18, 1973, pp. 4-7).

E. The undisclosed letters, even if impeaching, could not have been used to avoid convictions on Counts Four, Six and One since substantial proof of appellants' guilt thereon was adduced through sources other than Goberman.

Even assuming *arguendo* that the letters in issue were impeaching and that they could have been used further to impeach Goberman, appellants' claims would still warrant no relief as to Counts Four, Six and One since the importance of any of the disputed elements of Goberman's testimony to the verdicts on those Counts was sharply limited.

Counts Four and Six charged that on two separate dates the Parnesses caused the interstate transportation of sums of money of a value of $5,000 or more, which had been stolen, converted or taken by fraud, in violation of 18 U.S.C. § 2314. This Court specifically found that in order to convict Milton Parness on Counts Four and Six, "the jury was required to find only that he converted marker collections and caused the proceeds to be transported in interstate commerce. . . . Such convictions provide sufficient predicates for his conviction [on Count One]." *United States* v. *Parness*, *supra*, 503 F.2d at 438. As to Mrs. Parness, on the same evidence justifying her husband's

convictions on Counts Four and Six, this Court characterized the evidence of her participation as "overwhelming". *Id.* at 437.

The findings of this Court, on the sufficiency of the proof of the Parnesses' guilt on Counts Four and Six (and consequently Count One in Milton Parness' case) largely dispose of appellants' claims as to those Counts that nondisclosure of the letters entitles them to a new trial. This follows from this Court's finding that virtually all the elements of the conversion of the monies in those Counts were proven by circumstantial evidence, and hence not through Goberman's testimony. *Id.* at 436.* This Court singled out, among other things, the Parnesses' elaborate efforts to conceal the source of the funds used to purchase the cashier's checks in Counts Four and Six, including the false entries made in Olympic's Books; Parness' statements to the accountant; Barbara Parness' false grand jury testimony concerning the source of the funds and Parness' efforts to hide his personal involvement in the loans to Goberman, 503 F.2d at 436-437. This Court also noted the lack of any credible explanation on Parness' part of the source of the money used to fund the loan by Parness to Goberman. *Id.* at 437.

The only significant aspect of Goberman's testimony on these Counts related largely to the actual sums of money due the hotel—a sum he had calculated based on some of the exhibits in evidence and his own estimates.**

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* This court's entire discussion of the sufficiency point, at 503 F.2d 436-438, fully articulates the specific, non-Goberman evidence from which the jury was entitled to infer the facts of the conversions and the scheme to defraud.

** In summation, at least at one point, defense counsel conceded the correctness of the $400,000 figure in gambling markers Goberman said was and had been owed to the hotel, apparently in order to argue that Parness had not actually collected that money (Tr. 1634). The latter was a matter about which Goberman could only speculate.

Goberman's testimony, in substance, that at least $155,000 (the amount alleged in Counts Four and Six to have been converted) in markers were due the hotel in February, 1971, and that Parness was collecting hundreds of thousands of dollars in marker receipts at the time, was corroborated by the testimony of a number of junketeers, a gambler, Olympic's accountant, and a defense witness, John Blandino, the hotel's manager (Tr. 749-64; 772-80; 781-94; 805-820; 990-1010). The latter had also testified that there were substantial checks representing marker collections cashed by Parness but not deposited in the hotel's bank account.*

In sum, on the entire trial record, the proof of the Parnesses' conversions of the money in Counts Four and Six, as well as the basic elements of their overall scheme to defraud Goberman, came from witnesses other than Goberman. In these circumstances, the effect of further general impeachment of Goberman could have had no effect upon either the arguments of counsel in summation or more significantly, the import or persuasiveness of all the other testimony which established the Parnesses' guilt.

POINT II

The District Court correctly found without a hearing that the non-production of the letters was inadvertent.

Appellants assert that Judge Bonsal's finding of inadvertent suppression may not stand because it was reached without benefit of the evidentiary hearing they had requested and on the basis of insufficient government

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* Goberman also testified that the checks reflecting the funds acquired by fraud had been transported interstate. However, there was no dispute about this fact. Two other witnesses also testified to the interstate transportation (Tr. 616, 724, 1624-25).

affidavits. Additionally, appellants contend that Judge Bonsal was required to find as a matter of law that the government's non-production of the letters constituted "gross negligence", requiring the application to their motion of the less stringent "merely material or favorable" test. The arguments are in error. Judge Bonsal's findings were correct and soundly premised on the government's ample showing on the motion, the import of the trial record and myriad uncontestible facts. On this, the third new trial motion, and given the substantial predicates for his findings, Judge Bonsal was not required to hold a hearing, as the Parnesses baldly requested, in the absence of factual allegations from the defense raising some genuinely controverted issue of fact.

The 24 Goberman letters at issue herein bear dates beginning with December 13, 1972 and ending with August 23, 1973, and are addressed to a number of different government agents in the Department of Justice and the IRS.* The bulk of the letters were addressd to R.J. Campbell, previously the chief of Strike Force 18 located in Washington, D.C. Having failed to even make the suggestion below, appellants now for the first time on this appeal seek to portray Campbell as integrally involved in Goberman's trial preparation and in the preparation and conduct of the trial of Milton and Barbara Parness (B. Br. p. 25, M. Br. p. 8). This contention is palpably false, and its refutation requires review of Goberman's history as a witness and the manner in which this case was investigated and tried.

In late 1971 Allan Goberman testified in a grand jury in the Eastern District of New York concerning the activities of the Parnesses. Michael Pollack, a special as-

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* The identity of the individuals to whom the letters were sent and the number received by each are set forth, *supra*, p. 5, n.

sistant United States Attorney for the Eastern District of New York (J. 451-52) appeared for the government. Thereafter, in 1972, Goberman travelled to Detroit with Pollack, where he was further interviewed by, among others, Hal Swain, of the Department of Labor (J. 542), concerning possible corruption within the Teamsters' Union in Detroit. Thereafter, Goberman was interviewed on a number of occasions by Howard Eissler and William Glase, Special Agents of the United States Treasury Service. Subsequently, in 1972, it was determined that Goberman's allegations of the Parnesses' criminality lay within the jurisdiction of Strike Force 18, situated in Washington, D.C., and then headed by R. J. Campbell. From that point onward, Michael Pollack had no role in the prosecution of this case (J451-453). Goberman testified in the grand jury on a number of occasions, with both R. J. Campbell and his assistant at the time, John Dowd, appearing for the government. In February, 1973 a grand jury in the Southern District of New York returned an indictment against the Parnesses, 73 Cr. 157, charging them with crimes similar to the ones for which they were ultimately convicted.

Shortly thereafter the case was transferred to the United States Attorney's Office for the Southern District of New York, and Harold McGuire was placed in charge of the prosecution. At about that time R. J. Campbell turned over Strike Force 18's further role in prosecution and trial of the case entirely to John Dowd, also a Washington-based Strike Force 18 attorney. Thereafter in August of 1973, McGuire and Dowd obtained a superseding indictment, 73 Cr. 750, upon which the Parnesses were tried and convicted. At the trial the United States was represented *only* by McGuire and Dowd. Agent Glaze sat in the rear of the courtroom during the trial, and for a brief period Campbell entered the courtroom during Goberman's direct testimony. At no time did Campbell sit at counsel table; he was in New York in order to prepare

to testify as a witness himself in the impending perjury trial of Edward Feldman—a defendant, who subsequently pleaded guilty and testified against Parness in this trial. Campbell did not assist McGuire and Dowd in preparing Goberman for his trial testimony during the days or months immediately preceding the trial. He was, however, present outside McGuire's office and greeted Goberman when Goberman arrived to review his testimony with McGuire two days before trial. Campbell's active role in the case ended months before trial when the case was turned over to McGuire; he took no part in responding to the Parnesses' motions, preparing the bill of particulars, preparing witnesses for their trial testimony or in searching for and turning over *3500* and *Brady* material.

Against the background of these facts, the record of the trial and the affidavits submitted in connection with the motion, Judge Bonsal's finding that the non-disclosure was inadvertent was amply justified and not erroneous.

Judge Bonsal specifically held that:

> "The letters written by Goberman were each written to Department of Justice attorneys who were not involved in the trial or in its preparation. The one letter written to McGuire, the Assistant United States Attorney who represented the government at the trial, was sent by J. Joseph Flynn, Goberman's attorney, on July 21, 1973 and merely referred to Goberman's 'claim against the Internal Revenue Service for $60,000 which Mr. Goberman feels is owed to the Casino . . .' and does not suggest any promise by the government to recover the Casino-Hotel for him. Moreover, the affidavits submitted by McGuire and Dowd establish that each was unaware of the existence of these letters which were in an administrative file in Washington D.C., over which neither had control or responsibility." (J560-561)

As Judge Bonsal found, virtually all the letters were written to individuals who did not try or prepare the case during the months preceding the trial when, presumably, Dowd was actively gathering the *Brady* and *3500* material in accordance with McGuire's instructions. From this fact, Judge Bonsal was justified in concluding that McGuire and Dowd had no personal knowledge of the letters at the time of the trial. Moreover, as John Dowd's affidavit (J477-480) recites, the only letters of Goberman's which have been located in the Strike Force's files were contained in an administrative file, which was kept in Washington, D.C. before, during and since the trial. Dowd affirms that he was unaware of any of the correspondence contained in the administrative file * until at the earliest mid-December 1973, when he received copies of letters earlier sent by Goberman to Campbell and Pollack, claiming reimbursement for witness fees.

Appellants make no claim that the government deliberately suppressed the letters here in question. Instead, they contend that the government's conduct amounted to gross negligence, and that, therefore, to obtain a new trial they need show only that the undisclosed letters were merely "material and or favorable" to their case—the standard applicable in cases of deliberate or wilfull suppression by the government of *3500* or *Brady* material. See, *e.g.*, *United States* v. *Hilton*, 521 F.2d 164 (2d Cir., 1975), *United States* v. *Rosner*, 516 F.2d 269 (2d Cir. 1975). Appellants specifically contend that the letters of which the prosecution had knowledge constituted evidence which was of such high value to the defense that it could not have escaped the prosecutors' attention (M Br. 32-36). This claim does not withstand analysis.

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* The court was also justified in concluding from the totality of his affidavit that Dowd denied knowledge of all the rest of the letters which were not contained in the administrative file, and which were not addressed to him.

As the analysis in Point I, *supra*, has shown, the letters do not, taken individually or together, provide exculpatory or novel impeaching material. In holding that the non-disclosure was inadvertent, the district court specifically declined to find that the letters were either *Brady* or *3500* material. Many of the letters are, on their face, utterly unrelated to Goberman's testimony at trial and are not even remotely exculpatory of Parness (e.g. J570, 572, 577, 582, 583, 597, 607, 609). In view of the court's unwillingness to pass upon whether the letters were *3500* or *Brady*, it is difficult to understand how the letters may seriously be said to be of such high value to the defense in the eyes of any prosecutor in possession of them.*

Despite appellants' contrary claims or suggestions (M. Br. 34-35), no case has held that letters or documents contained in the files of one prosecutor geographically distant from another can be imputed to the prosecutor without possession of them, absent his knowledge of their contents. Manifestly neither McGuire nor Dowd was chargeable with what may or may not have been contained in Campbell's or Pollack's or Resnick's or Leff's files, located in Washington, Brooklyn and Detroit.** To say that individuals in possession of the letters who had no role in the prosecution, as in Campbell's and Pollack's cases, were grossly negligent in failing to turn over those letters is wholly without merit.

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* Appellants make no serious claim that the two letters actually addressed to McGuire & Dowd were either *3500* or *Brady* material.

**As the holding in *United States* v. *Quinn*, 445 F.2d 940, 943-44 (2d Cir.), *cert. denied*, 404 U.S. 850 (1971) teaches, knowledge of each of these letters cannot be imputed to McGuire. Thus, what may have been received, if indeed they were retained, by Campbell, Pollack, Swain, or Resnick may *not* be imputed to McGuire. See *United States Morrel*, Dkt. No. 74-1827 (2d Cir., August 29, 1975), slip op. 5873, concurring opinion, Friendly, *J.*

This is not a case like *United States* v. *Morrel*, Dkt. No. 74-1827 (2d Cir. August 29, 1975) slip op. 5873, as appellants suggest (agent at counsel table in possession of a file containing information directly contradicting a witness' testimony) or, *United States* v. *Seijo*, 514 F.2d 1357 (2d Cir. 1975) (witness' perjurious testimony evidenced by document in possession of prosecutor's office), or even *Barbee* v. *Warden*, 331 F.2d 842 (4th Cir. 1964) (police agents intimately connected with prosecution of case intentionally withheld proof of defendant's innocence without prosecutor's knowledge). The material withheld here simply did not contradict the witness' testimony.

In the present circumstances the court was justified in finding the non-disclosure to be inadvertent.

Appellants claim that Judge Bonsal was required to hold a hearing on the issue of whether the letters were inadvertently or deliberately suppressed, is similarly in error. It is well settled that on motions for a new trial the court may resolve disputed questions of fact and issues of credibility without an evidentiary hearing, on the basis of the affidavits submitted by the parties. *United States* v. *Johnson*, 327 U.S. 106 (1946); *United States* v. *Persico*, 339 F. Supp. 1077, 1083 (E.D.N.Y.), *aff'd*, 467 F.2d 485 (2d Cir. 1972), *cert. denied*, 410 U.S. 946 (1973).

The affidavit submitted by the prosecutor responsible for the preparation of the *3500* and *Brady* material (Dowd), coupled with the fact that the letters were not sent to the prosecutors who tried the case, but were sent to people in cities throughout the country, provided a sufficient basis for Judge Bonsal to find that the non-disclosure of the letters was inadvertent. Appellants' present claim that the affidavits and the record were an insufficient basis for the court's finding was waived by

their utter failure to inform the court of that claim at a time when the court might have required further proof. Indeed, in view of the appellants' persistent and all-pervasive insistence upon a hearing on the question of promises, and their failure to articulate their present claim when the prosecutor at oral argument suggested that additional affidavits be submitted if the present ones were insufficient, it is clear that appellants never claimed below that the affidavits were insufficient on the issue of inadvertence. Their sole claim was that the letters evidenced promises that had to be resolved at a hearing. Appellants should not be permitted, at this juncture, to capitalize upon their failure to make their claim to the district court in a fashion which would have allowed him to determine its merits.

Appellants rely principally upon the statement in *United States* v. *Hilton*, 521 F.2d 164, 167 (2d Cir. 1975) that:

> "the facts surrounding the non-disclosure be developed in an adversarial context."

Hilton is inapposite. Hilton was an incarcerated defendant without knowledge of the law, who was compelled to conduct his own cross-examination of government witnesses at a previously ordered hearing. Hilton had, in effect, been denied his right to counsel. Moreover, in that case, the District Judge did not make a specific finding on the issue of whether the non-disclosure was inadvertent.

In a recent case involving allegations of governmental misconduct and perjured testimony, *United States* v. *Franzese*, Dkt. No. 75-2051 (2d Cir. October 30, 1975), slip op. 335, this Court affirmed the District Judge's finding, made without an evidentiary hearing, that no new trial was warranted. Speaking on the issue of whether the District Court was required to hold a hearing, the Court significantly stated:

> "Although the question may have been close, we are unwilling to disturb the district court's decision not to conduct a hearing. Chief Judge Mishler had the advantage of intimate familiarity with the case, born of many pre- and post trial motions and a long trial where he had the opportunity to observe the witnesses . . . we hold that the judge was not required to conduct an evidentiary hearing." Slip op. at 346 (citations & footnotes omitted).

Judge Bonsal had a similar familiarity with this case. The trial lasted three weeks, and the instant motion which is the subject of this appeal is the third new-trial motion to be premised upon claims of newly-discovered evidence. Moreover, and more significantly, Judge Bonsal was completely familiar with the witnesses and evidence at trial. Judge Bonsal also had before him Dowd's affidavit and the letters themselves, addressed essentially to individuals other than the prosecutors who tried the case. On the entire record of the trial and the new trial motions, and in the absence of allegations of evidentiary facts in such detail as to have raised substantial issues, *Seiller* v. *United States*, Dkt. No. 75-2002 (2d Cir., Dec. 1, 1975) slip op. 6509, 6535, the court's finding was proper. Judge Bonsal was justified in not holding a hearing.

Finally, even assuming that Judge Bonsal was not entitled to find on the record before him that the government's failure to disclose the letters was inadvertent, this Court should still affirm his conclusion that neither a hearing nor a new trial is warranted. Applying the test least favorable to the government, in order to qualify for a new trial, that the newly discovered evidence merely be material and or favorable to the defense, *United States* v. *Hilton*, *supra*, the appellants cannot meet that burden either. The "materiality" test requires that the letters have more than "marginal utility" to the defense. *Id.* at 166. The letters here, as the analysis in Point I demon-

strates, had no utility whatsoever; it follows that even if the government's suppression were deemed grossly negligent or wilfull, no new trial can be granted.

POINT III

The District Court properly found without a hearing that the government had not promised Goberman that it would assist him in recovering the hotel or the $60,000 seized by the IRS.

Judge Bonsal specifically found that there was no support in the record for the claim that promises were made to Allan Goberman that the government would assist him in recovering the $60,000 or the hotel (J 558-59). Indeed, the record below convincingly demonstrates that no promises were made to him at all. The court based its decision upon the sworn affidavits of each of the prosecutors * who dealt with Goberman and had before it Goberman's own letter to another prosecutor in which he denied that any such promises were ever made to him.

Appellants contend that the affidavits were insufficient, that the district court was required to hold a hearing on

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* Appellants attempt to belittle Campbell's affidavit as being evasive. They apparently chose to ignore his statement that:

> That to the best of his present recollection neither he nor, to his knowledge, any other federal employee ever intimated, suggested, represented or promised to Goberman that the U.S. Government would in any way aid him in recovering his hotel and casino in St. Maarten, Netherland Antilles, from Parness;
>
> That to the best of his present recollection neither he nor, to his knowledge, any other federal employee ever intimated, suggested, represented or promised to Goberman that the U.S. Government would turn over to him $60,000 confiscated from one Sam Norber in New York City; (J 454).

the issue of the promises and that the trial court did not properly consider other evidence in the form of Goberman's pro se complaint in a civil action against the government in the Eastern District of Pennsylvania in December, 1974, and a statement Goberman made before District Judge in the District of New Jersey in February, 1975, while arguing a motion in his pro se action against the Parnesses for treble damages. These contentions are without merit.

The claim that Judge Bonsal was required to hold a hearing is frivolous. As we have recited *supra*, at p. 34, the cases do not require that the district court hold a hearing in these circumstances. Appellants offer no factual basis for their claim that the government made the alleged promises to Goberman—they have offered nothing more than their conclusions based upon Goberman's ambiguous unsworn statements made in a self-serving context. Appellants' conjectures in the absence of any affirmative testimony or affidavits supporting their claims cannot rise to the level of controverted facts. Indeed, on the issue of promises, the affidavits of the prosecutors may well be superfluous, since there is no affirmative proof from any source, by way of a sworn statement or written acknowledgement, that Goberman had been made a promise, and therefore no facts which were required to be controverted.

The only evidence appellants advance in support of their claim that Goberman expected help from the government with respect to the $60,000 and the hotel are the two utterances by Goberman. Goberman said to Judge Meanor in New Jersey:

> "The reason why your Honor I brought my claim under Section 1964D and I may be, as you explained it, wrong is the fact that the United States Government was supposed to have sued for

> the recovery under the act and to have recovered the hotel and returned it to me, and I'm trying to put myself in their position." (J 345-46).

Judge Bonsal specifically found that Goberman's statement to the district judge was ambiguous and that

> "Goberman did not understand the legal status of the Casino-Hotel. . . . It is also noted that nothing in the letters in question suggests the existence of a promise to recover the Casino-Hotel, which promise each of the government attorneys denies." (J559).

The Court's finding is conclusive and correct; Goberman's statement to the District Judge does not suggest any promise was made to him—only that he expected that the government would sue to forfeit the hotel, and that he would be the beneficiary of that action.

While the District Court did not specifically discuss Goberman's representation in his unsworn * complaint that R.J. Campbell had expressed to him his belief that "The government wants to convict the racketeers who stole the Hotel away from you and have it returned to you" (J549), it is plain that Goberman did not consider this to be a promise, as his letter (J458) indicates, as does a full reading of the complaint itself, in which Goberman discusses "promises", the only ones of which he mentions are promises of protection and a promise that he would be supplied with copies of statements made by him (J540, 542, 543, 549, 551). It is clear that Goberman did not consider this statement, if made, a promise.

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* Barbara Parness alternately describes this as a "sworn complaint," (B. Br. p. 7), and as an "apparently sworn" complaint (B. Br. p. 27): Milton Parness identifies it as a "sworn complaint" (M. Br. p. 38). The document itself is plainly unsworn, bears no affirmation that it is made under the penalties of perjury, and contains no notarial seal, signature or mark.

Moreover, even assuming that Campbell did make the claimed statement to Goberman, the defendants should have known that Goberman could have entertained a belief that the government's actions against the Parnesses would inure to his benefit. Specifically, they could have anticipated Goberman's expectations, based both on the fact that the statute provided for possible forfeiture of the hotel to the government and possible return to "innocent parties",* as well as on the fact that the government had begun preliminary steps towards seizure and forfeiture as much as six months prior to trial (Tr. 1511-1515). In addition, if made, Campbell's statement, on its face, was nothing more than an expression of what the government wished, or desired, not what it would do.

Finally, and most significantly, there is nothing in the letters which the government possessed that indicates that Goberman entertained the belief that he had a promise from the government that it would seek the return of his hotel in exchange for his testimony. Moreover, nothing in the record indicates that Goberman ever believed, in any event, *at the time of trial*, that his testimony would cause the government to assist him in his efforts to recover the hotel. Indeed, appellants completely ignore the significance of Goberman's letter and McGuire's affidavit that, regardless of what he may have believed at an earlier time, his state of mind at the *time of his trial testimony* was the only time that his belief that he had some promise with or commitment from the government is relevant.** Both Goberman's letter (J. 458)

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* See Judge Bonsal's discussion of the relevant provisions of the statute, *supra*, p. 11.

** Barbara Parness concedes in her belief that Goberman's beliefs about promises were relevant only insofar as he may have held such beliefs at the time of trial (B Br. 29-30). Defense counsel conceded below that whether Goberman believed the government would carry out its promise or not was irrelevant, but that whether the promise ever was made was the relevant concern (J. 528).

and McGuire's affidavit (J. 446) stand uncontroverted that Goberman entertained no such belief at the time he testified at trial.

Similarly, with respect to the $60,000 "promise", appellants offer nothing more than conjecture, based upon the fact that Goberman was supplied with the appropriate claim form, and thereupon made a claim to the Internal Revenue Service, which was denied. Nowhere in any of the documents or letters submitted in connection with the instant motion is there even a suggestion on Goberman's part that any promise was made with respect to the $60,000. Instead appellants choose to rely upon inferences they draw from bits and pieces of Goberman's letters that he believed that the government had promised to return the $60,000 to him (M. Br. pp. 22-26). Again, Goberman's letter and the prosecutor's affidavit, as well as the text of the letters themselves,* conclusively demonstrate the correctness of the court's finding of the non-existence of this alleged "promise". In view of the affidavits from the prosecutors, Goberman's letter and his statements in his complaint, and in the utter absence of any evidence which indicates Goberman believed there

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* The fact that Goberman indicates in one letter that he felt that the prosecutor believed his testimony that the $60,000 was owed to the hotel, and that he was calling this to the Internal Revenue Service's attention because the prosecutor had what Goberman claimed to be all his records that proved his right to the money, is a far cry from any promise. Moreover, proof that Goberman was "desperate" to recover the money would not have availed the defendants at trial, since the clear record of Gobrman's letters is that he perceived the government as his worst enemy, obstructing and hindering him at every turn and reneging on its promises to protect him (see, *e.g.*, letters at J 566, 567, 568, 569, 572, 582, 600, 607, 609 and J 458).

was a promise to him, the court properly did not hold a hearing, and correctly found that there was no promises from the government with respect to either his $60,000 claim or recovery of the hotel.

POINT IV

Goberman's deposition testimony does not entitle appellants to a new trial; it is neither newly discovered nor contradictory of Goberman's trial testimony.

Appellants contend that Goberman's deposition testimony establishes that he perjured himself at trial, and that the Government permitted * him to do so. These claims are as meritless as they are outrageous.

Appellants have, on this appeal, shifted the focus ** of their claim below that this evidence is newly discovered to the claim that regardless of whether the defense knew of the evidence, the prosecutor's suppression of it warrants a new trial. Analysis of the former claim reveals the patent absurdity of the latter. Judge Bonsal correctly found that this evidence was not newly discovered, nor was it inconsistent with the testimony at trial.

Goberman testified at trial to all three matters appellants now claim to have "newly-discovered" in the depositions. Goberman testified that he believed at least $400,000 gross was due the hotel based upon outstanding

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* Of the numerous irresponsible claims of prosecutorial misconduct, about the only one which appellants do not make explicitly in their briefs is that the prosecutors actively *suborned* Goberman's alleged perjury. Even that suggestion is only thinly veiled.

** Compare J. 18-45 with M., Br. pp. 43-45.

gambling debts ("markers") incurred by hotel patrons. He testified that Gx's 167-177 formed part of the basis of his calculation, although the total was based upon a past recollection and reference to records no longer available (Tr. 460-471). Goberman also testified that there were numerous junketeers who, after Parness' achieved exclusive control, brought their junkets to the hotel through Parness.

These junketeers, Goberman explained, were entitled to set off from the amount owed the hotel, and which would be collected by Parness alone, ten percent of the total, the cost of airfare, and fifty dollars per gambler in the junket group (Tr. 27-28, 453-454, 485-486). Goberman stated at trial that he was unable to say how much money Parness remitted to the hotel in January, February and March of 1971 (Tr. 460-461). He was never confronted with any of the checks reflected in GX 155, and turned over to the defense prior to trial, which were shown to him during his deposition. John Blandino, a defense witness, testified, however, that the sums remitted by Parness were hundreds of thousands of dollars (Tr. 1041).

Essentially, appellants claim that Goberman's post-trial statements modified or conflicted with his trial testimony in three ways:

(1) he conceded that addition of the gross totals in Government's Exhibits 167-177 at trial equalled $233,000;

(2) he allowed for certain deductions from junketeers' gross pick ups, and;

(3) he conceded that Parness remitted substantial sums of money to the casino between November 16, 1970 and January 14, 1971.

Judge Bonsal, however, rejected appellants' claims that these "concessions" were either newly discovered or even inconsistent with Goberman's trial testimony:

> "Defendants first contend that in the deposition Goberman substantially modified the testimony he gave at trial as to the amount owed to him by the Casino-Hotel or Milton Parness. At trial Goberman testified that he believed he was owed approximately $400,000 in gross marker pick ups as of February, 1971, and stated that he relied largely upon work sheets from the Casino-Hotel showing win-loss totals and marker pick ups during the period from October, 1970 through January, 1971. These work sheets were received in evidence as Government's Exhibits 167 through 177. Defendants' counsel cross-examined Goberman at length with respect to his estimates and used the exhibits in his summation. Defendants' present calculations and conclusions are based solely on the same exhibits and do not constitute newly discovered evidence.
>
> Defendants contend that Goberman's testimony at trial about the money owed him by Milton Parness in unremitted marker pick ups was false in that Goberman did not state that Parness was entitled to deduct certain commissions from the gross marker pick ups that Parness was to collect. This contention does not entitle defendants to a new trial because of newly discovered evidence. *See United States* v. *Slutsky*, 514 F.2d 1222 (2d Cir. 1975). Defendants were the recipients of these commissions and Milton Parness demonstrated his knowledge of them when he testified at a hearing before this Court. In addition, Goberman referred to these commissions in his direct testimony at trial.

> Defendants contend that the existence of checks constituting remittances from Milton Parness' corporation, Olympic Sports Club, Inc., to the Casino-Hotel during December, 1970 and January, 1971 which should have been credited to the amount owed to Goberman was not revealed to defendants by the Government during or prior to trial. The trial record shows that these checks were reflected in the evidence at trial, specifically in Government's Exhibit 155, which defendants' counsel used for cross-examination and in summation. Moreover, the checks were written on the account of Olympic Sports Club, Inc., the corporation controlled by Milton Parness, who knew or should have known of their existence at trial. *See United States* v. *Slutsky, supra.*
>
> Accordingly, none of the foregoing items constitute newly-discovered evidence." (J 554-55).

The record of the trial * amply supported Judge Bonsal's findings and his conclusion that, under the appropriate standard to be applied in cases of allegedly newly-discovered evidence, the evidence was not "newly-discovered," and was not of such a character that it could have avoided the conviction. *United States* v. *Stofsky*, Dkt. No. 74-1860 (2d Cir. Nov. 7, 1975) slip op. 515; *United States* v. *Marquez*, 363 F. Supp. 802, 805 (S.D.N.Y.), *aff'd on the opinion below*, 490 F.2d 1383 (2d Cir. 1973). The patent absurdity of appellants' claim requires no further observation than that counsel, with minimal diligence, could have performed the same addition at trial that they performed at Goberman's deposition. Obviously counsel at trial preferred to argue to the jury that because Goberman had indicated that he

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* The entire issue of the deposition testimony is more fully discussed below in the Government's affidavit of March 4, 1975 (J. 374-386), and its supporting memorandum of law.

could not arrive at a correct total without the records he was missing, he was simply speculating as to how much money was due the hotel (Tr. 1618-1619). Incredibly, they claim that the Government concealed this fact from them.*

Similarly, little need be said about the claim that Goberman had never previously disclosed the junketeers' commission rates; his trial testimony contains numerous references to these commissions (Tr. 27-28, 453, 454, 485, 486).** Moreover, since Parness was making the collections, he was singularly situated so as to know exactly how much of the gross pick up was deductible. Indeed the court found *supra*, that Parness himself was familiar with them when he testified at a hearing during the trial (Tr. 551).

Finally, with respect to the remitted marker collections, the amount of marker collections remitted to the Hotel was before the jury at trial, and was in excess of $500,000 during January through March of 1971, as evidenced by the cash receipts book of Olympic, GX 155. Defense counsel employed this exhibit in his summation (Tr. 1626, 1628); it is difficult to see how Goberman's

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* Once again counsel takes the opportunity to level an additional charge of professional misconduct against AUSA McGuire (M Br. 40-43). Appellants claim that McGuire lied or made misrepresentations to the Court and counsel concerning the fact that the records Goberman was referring to were all the records Goberman relied upon to reach his total. If anything is certain it is that Goberman made absolutely clear that these were *some* of the records on which he based his total, and McGuire merely was representing that all the records presently available to Goberman were GX's 167-177. (See e.g., Tr. 460-482) defense counsel's summation at Tr. 1618-1619, and appellants' brief on the direct appeal pp. 16-17).

** The tapes also contain similar references, e.g., G. 29, 30, 38.

examination of the checks adds anything new to the case as the jury heard it.*

In sum, appellants' "newly discovered" evidence is neither new, inconsistent, nor, more significantly, probative of anything. Appellants have, through the depositions, simply attempted to draw new conclusions from old evidence. New trials are not granted in such circumstances; none should be granted here.

POINT V

Milton Parness' sentencing was proper and should not be disturbed.

Milton Parness contends that the "dangerous special offender" hearing held pursuant to Title 18, United States Code § 3575, was jurisdictionally defective and that therefore he must be resentenced by another judge. Parness contends that the "dangerous special offender" hearing prejudiced him by serving as a vehicle for the introduction of otherwise inadmissible evidence. Parness, however, was not sentenced as a "dangerous special offender." ** The evidence adduced at the hearing was no more prejudicial to Parness than data which is normally available to a sentencing judge under Rule 32(c)

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* Moreover, appellants' claim that Goberman "conceded" that $129,000 was deductible from the gross total owing to the Hotel is not correct. At most, he conceded in his deposition that only $17,000 might not have been considered by him in figuring his new total owing to the hotel of $650,000, a figure which he had used in depositions taken in connection with creditors' claims against him in 1972, turned over as GX 3502.

** Judge Bonsal did not necessarily "rely" upon the matters adduced at the hearing as Parness contends, but merely indicated he had "considered" it (Tr. J 671).

(2) of the Federal Rules of Criminal Procedure or under Title 18, U.S.C. § 3577, which provides that

> "No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence."

Indeed, the hearing Parness complains of offered him the unusual opportunity not only to rebut adverse information supplied by the government, but also to cross-examine the witnesses presenting that information. The hearing was substantially more favorable to Parness than the ordinary sentencing procedure.

Parness here contends, by implication, that the rules of admissibility at sentencing are congruent with evidentiary rules at trial (M. Br. 46 n. 48, M. Br. 48 n. 52). Yet it is a fundamental principle that sentencing procedures are liberal as to the range of evidence that may be considered, *Williams* v. *Oklahoma*, 358 U.S. 576, 584 (1959); *Williams* v. *New York*, 337 U.S. 241, 247 (1949). Probativeness rather than procedural exactitude is the concern at sentencing, so that consideration of counts of an indictment dismissed by the government, *United States* v. *Needles*, 472 F.2d 652, 655 (2d Cir. 1973), hearsay evidence, *United States* v. *Rosner*, 485 F.2d 1213, 1231 (2d Cir. 1973), *cert. denied*, 417 U.S. 950 (1974), evidence obtained in violation of the Fourth Amendment, *United States* v. *Schipani*, 435 F.2d 26 (2d Cir. 1970), *cert. denied*, 401 U.S. 983 (1971), and even evidence adduced with respect to crimes for which the defendant has been acquitted, *United States* v. *Sweig*, 454 F.2d 181 (2d Cir. 1972), may properly be considered by the sentencing judge. In this case the government offered the evidence at the hearing both for its probativeness on the danger-

ous special offender issue as well as on Parness' sentence irrespective of the dangerous special offender claim. (See Government's undated Memorandum on Sentencing).

Citing no authority, Parness claims that *in camera* consideration of grand jury testimony "obviously" violated his constitutional rights. This ignores established precedent. A sentencing judge may properly decline to disclose presentence information when confidentiality is required. *United States* v. *Alexander*, 498 F.2d 934 (2d Cir. 1974), Fed. R. Crim. P. 32(c)(2). Parness' objection is even weaker in this case, where no request for disclosure was ever made. *United States* v. *Baker*, 429 F.2d 1344, 1348 (7th Cir. 1970) is almost precisely on point. In that case no prejudice was found in the sentencing judge's reliance on undisclosed presentence reports. The Seventh Circuit observed that the undisclosed information (1) was known to exist, (2) was never requested to be disclosed, and (3) was known in its substance by the defendant. All three of these considerations apply equally here in regard to the grand jury testimony. The minutes were introduced at the hearing as Exhibit 6, and thus their existence was known; no objection was made to their introduction; and the government specified the substantice of the testimony (J 651). Parness himself was in court and could have refuted the substance of the testimony; he did not avail himself of that opportunity.*

* Parness, relying on *United States* v. *Weston*, 448 F.2d 626 (9th Cir. 1971), *cert. denied*, 404 U.S. 1061 (1972), also argues that certain evidence submitted to the trial judge was not sufficiently reliable to be considered. What Parness overlooks is that the unreliable evidence adduced in *Weston* was explicitly relied upon by the judge and resulted in the defendant receiving an additional 15-year sentence. In the instant case, any evidence which might have been of only slight probative value would certainly have been recognized as such by the experienced trial judge. Indeed, the judge's determination that Parness should not be deemed a dangerous special offender plainly demonstrates that he viewed much of the Government's proof as unpersuasive.

In short, Parness' attacks on the evidence adduced at sentencing must fall before the well settled rule that it will be left to the discretion of the sentencing judge to assess the value of the information placed before him. *United States* v. *Tucker*, 404 U.S. 443, 446-47 (1972); *United States* v. *Doyle*, 348 F.2d 715, 721 (2d Cir.), *cert. denied*, 382 U.S. 843 (1965).

Parness' sentencing therefore was proper and should not be disturbed.*

CONCLUSION

The order of the District Court should be affirmed.

Respectfully submitted,

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Of Counsel.

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* Parness claims that the sentence he received was "extremely harsh" and that this indicates the evidence adduced at the post-trial hearing adversely affected his sentence. On the contrary, this was the defendant's third conviction. In both 1962 and in 1963, he had been convicted of interstate transportation of stolen securities (J 680-681). Despite the substantial terms of imprisonment received as a result of those convictions, Parness, undeterred, went on to commit the serious offenses for which he was convicted in this case. His conviction on four counts of the instant indictment exposed him to a maximum term of 50 years' imprisonment. Under the circumstances, Parness' 10-year sentence can hardly be characterized as "harsh".

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STATE OF NEW YORK)
COUNTY OF NEW YORK) ss..

Joel N. Rosenthal being duly sworn, deposes and says that he is employed in the office of the United States Attorney for the Southern District of New York.

That on the 29th day of December, , 1975, he served ~~4~~ 2 copies of the within brief by placing ~~the~~ same each in a properly postpaid franked envelopes addressed: 2 of the

John Pollok, Esq
233 Broadway
New York, N.Y. — attorney for Appellant Barbara Parness

and

Jay Goldberg, Esq.
299 Broadway
New York N.Y. attorney for Appellant Milton Parness

And deponent further says that he sealed the said envelope and placed the same in the mail box for mailing at One St. Andrew's Plaza, Borough of Manhattan, City of New York.

Joel N. Rosenthal, AUSA

Sworn to before me this
29 day of December, 1975

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